United Nations A/HRC/26/29/Add.3

General Assembly

Distr.: General
10 June 2014

English only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Addendum

Mission to Rwanda: Preliminary comments by the Government on the report of the Special Rapporteur*

* Reproduced as received

GE.14-04648 (E)
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I. Introduction

1. The Government of Rwanda would like to thank the Special Rapporteur for his visit to Rwanda, in the context of the standing invitation extended by Rwanda to all UN Human Rights special procedures. The Government appreciates the interest showed by the Special Rapporteur, and the fact that he acknowledges the progress achieved in many areas in the promotion and protection of the rights under his mandate and takes note of his recommendations.

2. The Constitution of the Republic of Rwanda provides for the fundamental human rights of every Rwandan including the right to freedom of Peaceful Assembly and of Association. Such a right is specifically provided for in Article 33 which provides that: Freedom of thought, opinion, conscience, religion, worship and public manifestation thereof is guaranteed by the State in accordance with conditions determined by Law. Additionally Article 35 provides that: Freedom of association is guaranteed and shall not require prior authorization. Article 36 further states that: Freedom of peaceful assembly without arms is guaranteed if it is not inconsistent with the law.

3. These Constitutional provisions guarantee the right of every Rwandan to hold and attend peaceful assemblies. The International Convention on Civil and Political Rights and the International Convention on Economic Social and Cultural Rights to which Rwanda is a State Party also guarantee those rights. Notably, the Constitution is the Supreme law of the land and all other national laws are interpreted in conformity with its intent and spirit. International Conventions ratified by Rwanda are also directly applicable in Rwanda and are enforceable in national courts. They also take precedence over all other national laws save for the Constitution. This hierarchy of laws ensures that the fundamental human rights of every Rwandan are guaranteed and protected according to internationally agreed upon standards.

4. The Government would like to clarify a number of inaccuracies and omissions in fact and law contained in the report that we believe do not reflect the actual state of the promotion and protection of the rights of peacefully Assembly and Association in Rwanda.

II. Historical and political background

5. Regarding paragraphs **7, 8** and **9**, the Special Rapporteur direcly and through citing certain reports and publications provides an inaccurate and selective historical and political background. The appropriate historical reference is as follows;

- For centuries, Rwanda existed as a centralized monarchy under a succession of Tutsi kings from one clan, who ruled through cattle chiefs, land chiefs and military chiefs. The king was supreme but the rest of the population, Bahutu, Batutsi and Batwa, lived in harmony. In 1899, Rwanda became a German colony and, in 1919, the system of indirect rule continued with Rwanda as a mandated territory of the League of Nations, under Belgium. From 1959, Batutsi were targeted, causing hundreds of thousands of deaths and sending almost two million of them into exile. The First Republic, under President Gregoire Kayibanda, and the second, under President Juvenal Habyarimana, institutionalized discrimination against Batutsi and subjected them to periodic massacres.
- The Rwandese Alliance for National Unity (RANU) was formed in 1979 by Rwandan refugees in exile, to mobilize against divisive politics, repeated massacres, statelessness and the lack of peaceful political exchange. In 1987, RANU became the Rwandese Patriotic Front (RPF). On 1 October 1990, the RPF launched an

armed liberation struggle that ultimately ousted the dictatorship in 1994 and ended the genocide of more than one million Batutsi and massacres of moderate Bahutu who opposed the genocide.

- After Kigali fell to RPA (RPF's armed wing) on 4 July 1994, RPF formed a Government of National Unity headed by President Pasteur Bizimungu, bringing parties that did not participate in the genocide together. In 2000, Parliament voted out President Pasteur Bizimungu and RPF appointed then Vice-President and Minister of Defense, Major General Paul Kagame as the President of the Republic to lead the coalition government. In 2003 President Paul Kagame was elected to serve a term of seven years. In 2010, President Paul Kagame was re-elected to serve a second term.

6. Regarding **paragraph 11**, the Special Rapporteur "calls on Rwanda's authorities to take an inclusive and holistic approach on the consequences of the war and genocide on all sides"... Firstly, the "war" and the genocide against the Tutsi are two distinctly parts of Rwanda's history and must be treated as such. Any attempt to suggest causality is historically incorrect and dangerous. As stated above, the "war" was a liberation struggle by Rwandan refugees in exile against the divisive politics in place in Rwanda in the period leading up. The genocide against the Tutsi was a premeditated act that the international community was aware of and has recognized in fact. Secondly, the Government has over the past twenty years assiduously advanced the unity and reconciliation of all Rwandans through an honest examination of all aspects of our history through both traditional mechanisms and processes and experiences from other countries including the South African TRC. Justice, accountability and reconciliation have always been at the core of that process. It is these efforts that have directly contributed to the significant progress the Special Rapporteur recognizes in **paragraph 10**.

III. Legal framework to prevent and punish the crime of genocide and its impact on the Exercise of the rights to freedom of peaceful assembly and of association

7. Regarding **paragraphs 12** and **13**, the Special Rapporteur acknowledges the imperative of ensuring the prevention and non-recurrence of genocide in Rwanda and further recognizes the progress the government of Rwanda has made in that regard. The Government would like to emphasise that these laws were developed through a broad grass roots based national consultative process that fully took into account Rwanda's specific historical and social context. That process continues today and informs all actions of all branches of government.

IV. Exercise of the right to freedom of peaceful assembly

A. Legal framework

8. Regarding **paragraphs 17** to **20**, Article 36 of the Rwandan Constitution provides, "that Freedom of peaceful assembly without arms is guaranteed if it is not inconsistent with the law. Prior authorization shall only be necessary if the Law so requires and solely in the case of assembly in the open air, in a public place or on a public road, to the extent that such is necessary in the interests of public safety, public order or public health". The Government therefore strongly disagrees with the assessments contained in these paragraphs.

B. Practice

9. Regarding **paragraphs 21** to **25**, the Government rejects the subjective assertions contained in paragraph 21 which have no basis in fact or practice. The Government is firmly committed to upholding the rule of law and all those acting contrary to the law are brought before impartial and independent courts and justice is done and seen to be done as illustrated in the case the Special Rapporteur refers to in paragraph 24.

10. Regarding **paragraph 27**, the Government would like to inform that Law 09/2000 has been amended and the Law determining the powers, responsibilities, organization and functioning of the Rwanda National Police is now governed by Law N°46/2010. Article 38 of this Law governs the use of firearms and is in compliance with the Basic Principles.

11. Regarding paragraphs **30** and **31**, the Government would like to emphasise that Organic Law N° 10/2013/OL governs political organizations and politicians. Chapter VII of the Organic Law governs the conduct of political organisations and politicians and in particular, Article 34 stipulates that no political organizations or politicians shall undermine public order or the rights and freedoms of the individual, in particular and of the people in general. As stated previously, the Government is committed to upholding the rule of law and those acting contrary to the law have been and/or will be brought to account.

V. Challenges to the exercise of the right to freedom of association

A. Political parties

1. Legal Framework

12. Regarding **paragraphs 33** and **34**, the Government does not share the Special Rapporteurs characterization of Organic Law 01/2012/OL and Organic Law N° 10/2013/OL and the effects he believes it has. The legal and political environment enshrined in the two Organic Laws has allowed for eleven political parties to register and function and in no way does it hinder the registration of any party fulfilling the legal requirements.

2. Space for opposition political parties

13. Regarding **paragraphs 36** to **38**, the Government would like to point out that Organic Law N° 10/2013/OL governing political organsitations and politicians is explicit in its provisions and as the Special Rapporteur recognizes provides that political organisations shall be formed and allowed to operate freely. The information provided to the Special Rapporteur regarding the political order in Rwanda is false and entirely misleading. Constructive public criticism and dissent is a feature of the Rwandan political order and exercised by all without fear or favour. The boundary between ordinary dissent and genocide ideology is very clear. Genocide ideology in Rwanda is clearly defined by law in Rwanda and anyone engaging in it cannot then claim to be exercising there right to dissent.

14. Regarding **paragraph 41**, the Government would like to clarify that Articles 259 and 260 of Law N° 30/2013 of 24/05/2013 relating to the Code of Criminal Procedure provides for the rehabilitation of any person convicted for a felony or misdemeanor and as such individuals can hold leadership positions in political organisations. Regarding the alleged disappearance of Aimable Sibomana Rusangwa, the Government is not aware of his reported disappearance and invites the Special Rapporteur to provide it with any credible information he may have in that regard.

15. Regarding **paragraph 42**, the Government refutes the Special Rapporteurs characterization of peaceful public disagreement in Rwanda. This statement is without foundation in fact, practice or law and cannot be considered as reflecting a careful assessment of the situation in Rwanda. The successful reconstruction in Rwanda that the Special Rapporteur recognizes is a product of many factors including the rights enjoyed by individuals to peacefully criticize or disagree.

B. Non-governmental organizations

1. Legal Framework

16. Regarding **paragraphs 45** and **47** and **paragraphs 49** to **52**, the Government would like to point out that it views the registration requirement as necessary for facilitating harmonized interventions between government and NGOs and as necessary to ensuring the principles of transparency and accountability. Since the adoption of Law N° 04/2012, the number of registered NGOs has continued to grow, procedures have been streamlined and over the last two years 597 NGOs have registered with the Rwanda Governance Board (RGB). RGB continues to work with NGOs to ensure that they are able to conduct their activities freely and in accordance with the law and that registration procedures are simplified and efficiently and effectively concluded.

17. Regarding **paragraph 48**, the Government would like to clarify that if an NGO operates in more than one district, the letter of collaboration is required only for the district in which they have their headquarters and that a NGOs legal personality certificate is valid in the whole country.

18. Regarding **paragraphs 56** to **58**, national and international NGOs and private companies are distinctly different entities and as such subject to different regulatory regimes, processes and treatment under the law around the world, Rwanda is no exception. However, as mentioned previously the Government is committed to ensure that NGOs are able to conduct their activities freely and in accordance with the law and that registration procedures are simplified and efficiently and effectively concluded.

19. Regarding **paragraph 60**, the Government views the Special Rapporteurs observation as having no basis in fact, practice or law. The law is applied equally to all CSOs.

20. Regarding **paragraph 61**, the Government would like to point out that the Special Rapporteurs observation regarding RGB's role is misleading. Article 30 of Law 04/2012 must be read together with article 29 of the same Law and cannot be cited selectively to make an assertion. Article 29 of the same law clearly delineates the RGB's role.

21. Regarding **paragraph 62**, the Government would like to state that the case referred to in this paragraph is currently subject to a judicial process and as such cannot comment on it.

22. Regarding **paragraph 68**, the Government views the JADF as being in line with the partnership commitments contained in the five principles of the Paris Declaration on Aid Effectiveness, which include mutual accountability. The government is committed to these principles and will continue to encourage them in our relations with development partners. In that regard, the Government has decided to end the compulsory financial contributions by local and international NGOs.

23. Regarding **paragraph 72** and **73**, the Government would like inform that a judicial process is underway in regards to the case referred to.

VI. United Nations' assistance activities

24. Regarding **paragraph 80**, as mentioned earlier, the Government has indicated the flawed nature of the Special Rapporteurs assessment of the RGB. The Government would like to point out that it welcomes the cooperation and assistance of the One-UN Rwanda programme through the UNDAP 2013-2018. The technical assistance provided through the UNDAP has and continues to positively contribute to the promotion and protection of human rights in Rwanda. It has further strengthened the capacity of CSOs and government and contributed to stronger partnerships and collaboration.